

Mr H complains that a car supplied under a conditional sale agreement with Moneybarn No. 1 Limited ("Moneybarn") wasn't of satisfactory quality. He wants to reject the car.

background

In March 2018 Mr H was supplied a used car under a conditional sale agreement with Moneybarn. The car was six years old and had covered over 83,000 miles at the point of supply.

Within a month of getting the car, the air suspension needed to be repaired by the dealership. Three months later an automatic brake fault code was displayed. In early September 2018 the car broke down due to turbo failure. The dealership would not carry out this repair as it said Mr H had exceeded his warranty mileage. Mr H arranged for a third-party garage to replace the turbos. Within a month of repair the turbos failed again and the engine seized.

Mr H complained to Moneybarn about the quality of the car in November 2018. Moneybarn arranged for an independent assessment, the report concluded the engine had failed and the fault would not have been present or developing when the car was supplied to Mr H. Moneybarn did not uphold Mr H's complaint. It said it was not responsible as the engine failure was caused by the third-party garage of Mr H's choice, not changing the oil feed pumps when it replaced the turbos. The dealership offered Mr H £500 towards the repair.

Mr H remained unhappy, he brought his complaint to our service. One of our investigators recommended the complaint should be upheld. She did not think the independent report considered the car's full history since supply. Given the faults experienced during the first six months, she did not think the car was of satisfactory quality when it was supplied to Mr H. The investigator recommended Mr H be allowed to reject the car, she asked Moneybarn to cancel the agreement and amend his credit file. The investigator also asked Moneybarn to refund the monthly instalments when Mr H was without the car, reimburse him consequential repair costs and pay him £350 compensation for the inconvenience caused.

Moneybarn disagreed, it asked for an ombudsman to review the complaint.

The car was repaired after the investigator's view, Mr H has lost confidence in the car, he wants to reject it.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm upholding the complaint and I'll explain why.

Under the relevant legislation -Consumer Rights Act 2015 (CRA) the car should have been of satisfactory quality when it was supplied to Mr H. If it wasn't then Moneybarn, who are also the supplier of the car is responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking into account any description of the goods, the price and all other relevant circumstances. A car that isn't sufficiently durable, can also be considered not to be of satisfactory quality at the point of supply.

In a case like this which involves a car the other relevant circumstances include things like age, mileage and price at the time the point of supply. The car here wasn't new, it was six years old and had completed over 83,000 miles when it was supplied to Mr H.

The car was supplied to Mr H in March 2018. Within a month, the car had broken down and displayed the error code - level control failure. Mr H got in touch with the dealership, who replaced the damaged compression hose. Four months after supply the car displayed the error code -automatic hold brake fault. The car was returned to the dealership who cleared the code. It is not clear whether they carried out any repairs in relation to this. In September 2018 the car broke down again. This time the fault reported was - drivetrain error.

Mr H was going on holiday, when the drivetrain error came on. The dealership agreed to look at the car when he got back. On his return the dealership determined the turbos had failed. Mr H was also in touch with the broker, he was told that he would have to pay for the repairs, as he had exceeded the mileage allowance on his warranty.

Mr H was unable to afford the cost of repairs until October 2018. The dealership referred Mr H to a turbo specialist, who provided the replacement turbos. Mr H had the turbos replaced by a third-party garage. Just one month after the repair, the turbo's failed again and the engine completely seized. The car needed to have the engine replaced. In November 2018 Mr H got in touch with Moneybarn, he thought the broker had already notified it about the problems he'd been having, it hadn't. When Moneybarn got in touch with the dealership it was told that the turbo failure was caused by the third-party garage's failure to change the oil feed pipe when it replaced the turbos.

Moneybarn arranged for an independent inspection of the car in December 2018. The report concluded that the engine failure was a *sudden occurrence* and therefore the fault would not have been present or developing at the time the car was supplied.

Having reviewed the independent report carefully, I don't think the expert considered the history of faults Mr H experienced when determining whether the car was of satisfactory quality at the point of supply. I say this because the expert makes no reference to the fact the car had already experienced turbo failure in September 2018, there does not appear to be any consideration as to whether the problem could be related or not. Whilst an independent report can be useful in determining whether a vehicle is of satisfactory quality, it is only part of the overall evidence we take into consideration, when reaching a decision. For the reason I've outlined I don't find the independent report persuasive.

Other than what the dealership told Moneybarn, I've not seen any evidence to suggest the second turbo failure in November 2018 was caused by the third-party garage not changing the oil feed pipes. The third-party garage confirmed it checked the pipes and the oil flow was fine.

Moneybarn says turbos are wear and tear items and are not expected to last the lifetime of the car. However, the turbos failed twice, within a short space of time which suggests this isn't a wear and tear issue. In addition, Mr H also experienced problems with the automatic brake and the suspension, within the first six months of supply. Whilst it isn't a new car and had covered over 80,000 miles at the point of supply, I don't think a reasonable person would expect to experience all these issues so soon after getting the car, so I don't think the car was sufficiently durable.

Mr H told us that before the car was supplied it had a drivetrain error and the dealership completed a repair. Mr H experienced a loss of power and a drivetrain error warning came on in September 2018, when the turbos initially failed. A month after the turbos were replaced, the turbos failed again. In addition, the car is subject to a safety recall notice for an EGR issue. Mr H experienced the drivetrain error warning and loss of power symptoms listed for this issue. Given the drivetrain issue before supply and the subsequent two turbo failures in a short space of time, I think this indicates a performance related fault was either present or developing when the car was supplied, so I don't think the car was of satisfactory quality when it was supplied to Mr H.

The car was recently repaired again, but understandably Mr H has lost confidence in the car and wants to reject it. I appreciate Moneybarn did not become aware of the issues Mr H was having until he contacted it directly in November 2018, however it appears the broker did not pass this information to Moneybarn as Mr H had asked it to and I don't think it would be fair to hold Mr H responsible for the communication problems between the businesses.

The car has now been repaired, but there has been previous repair attempts and the car has remained unused since November 2018. In the circumstances I think Moneybarn should now allow Mr H to reject the car.

Moneybarn should cancel Mr H's finance agreement and collect the car with nothing further to pay. It should remove the credit agreement from Mr H's credit file and refund his £1,300 deposit. The car was off the road in September 2018 when the turbos initially failed and Mr H only had the car back for a month, before the turbos failed again. So, I think Moneybarn should refund the September 2018 instalment and any instalments Mr H paid towards his finance agreement from November 2018. Moneybarn should also refund Mr H the £66 towing and repair costs incurred (Moneybarn already has the invoices). I think it's fair to ask Moneybarn to pay 8% simple interest on these refunds too as Mr H has been deprived of this money. Mr H has clearly been inconvenienced by the problems with the car and I think Moneybarn should pay Mr H £350 compensation to reflect this.

final decision

For the reasons I've given above I uphold this complaint and instruct Moneybarn No. 1 Limited to:

- cancel the finance agreement with nothing further to pay and collect the car at no cost to Mr H
- remove the information about the finance agreement from Mr H's credit file
- refund Mr H's advance payment of £1,300 and add 8% simple interest from the date of payment to the date of settlement*
- reimburse Mr H for parts and labour costs incurred for repairs (invoices supplied) and add 8% simple interest from the date of payment to the date of settlement*
- reimburse Mr H £66 recovery costs and add 8% simple interest from the date of payment to the date of settlement*
- refund Mr H the September 2018 instalment to compensate him for when he didn't have use of the car. Adding 8% simple interest from the date of payment to the date of settlement*
- refund all instalments Mr H has paid towards his finance agreement from and including November 2018 to compensate the lack of use of the car. Add 8% simple interest from the date of the payments to the date of settlement*
- pay Mr H £350 to compensate him for the stress and inconvenience he experienced

*If HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Mr H a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 July 2020.

Karen Dennis-Barry
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